

BLACKFEET – MONTANA PROPOSED WATER RIGHTS COMPACT

WHERE WE ARE

The Blackfeet Tribe, the State of Montana and the United States have long been in negotiations to settle the federal reserved water rights claims of the Tribe, its members and allottees. The Parties have recently agreed to release a new draft of a proposed settlement (called a “Compact”) to the public for review and comment. This proposed Compact would resolve the federal reserved water rights on the Blackfeet Indian Reservation. It seeks to balance a fair recognition of these rights with protections for existing water users who claim rights under State law. If, after public comment, the Tribe and the State agree to go ahead with this Compact (whether as is or in a modified form), it will need to be formally approved by the State legislature and the Blackfeet Tribe, and by Congress, which will also need to authorize and appropriate funding for tribal development of its water rights and for contributions for measures to mitigate the impacts of tribal development on State law-based water users. The State anticipates making significant contributions to these mitigation efforts as well. The order of State and federal approval remains to be determined. After the State and federal governments have approved the Compact it will be submitted to the Tribe for final approval. After formal approval by all three Parties, the water rights will go to the Water Court to be decreed. In the event this negotiated process is unsuccessful, the Tribe’s water rights will need to be resolved in litigation.

PROPOSED COMPACT BASICS

In general, the proposed Compact:

- Provides water from surface flow, groundwater and storage for the Blackfeet Tribe for existing and future tribal water needs.
- Provides protections for all current water users for non-irrigation rights in all affected water basins from the Tribe’s future exercise of its water right.
- Provides various protections for all current irrigation uses in Birch Creek and the Badger Creek and Two Medicine River basins and a grace period before Tribal development in Cut Bank Creek and Milk River drainages.
- Sets out as an Appendix to the Compact a management plan for Birch Creek to maximize the utility of both tribal and non-tribal use.
- Settles tribal claims in the St. Mary River basin by providing the Tribe with an allocation of 50,000 acre-feet of water with protections for the Milk River Project.
- Closes on-reservation portions of water court basins to new water appropriations under state law; changes and transfers of water rights can continue and a process will be available authorizing small domestic and stock uses.
- Provides for an administrative structure where the Tribe will administer the Tribal Water Right, the State will administer rights arising under state law, and a Compact Board will referee disputes between the two systems.
- Creates a Compact Board with an administrative process for resolution of any future disputes between Tribal and non-Tribal water users.

- Provides for an allocation of water stored in Tiber Reservoir (in an amount to be determined by Congress) for the Tribe to use or market.
- As a way of mitigating the impacts of the Tribe's water rights on Birch Creek water users, the Compact is accompanied by a Birch Creek Agreement that commits the State to pay the Tribe \$14.5 million in exchange for the Tribe deferring new development of its Birch Creek water rights for 15 years and to providing 15,000 acre-feet of water per year from a rehabilitated Four Horns Reservoir for an additional period of time (10-15 years depending on how long the Four Horns rehabilitation takes)

BLACKFEET TRIBAL WATER RIGHT

BIRCH CREEK

- 100 cfs from the natural flow of Birch Creek for irrigation use in the Upper Birch Creek Drainage.
- Instream flow of 25 cfs from April 1 to Sept. 1 and 15 cfs from Oct. 1 to March 31. The Tribe may reduce this instream flow and allocate this water to other uses but not below 10 cfs.
- Whatever water remains after satisfaction of the Tribe's irrigation and instream flow rights and satisfaction of all existing rights arising under State law
- A management plan will be attached as an Appendix to the Compact that provides for coordinated management of Birch Creek water for meaningful development for the Tribe while minimizing impacts to off-reservation water users.

BADGER CREEK/TWO MEDICINE RIVER

- The Tribe has a water right to all surface water and groundwater. Current non-Tribal water uses are not subject to a call from new Tribal development. Any non-Tribal water right subsequently purchased by the Blackfeet Tribe becomes part of the Tribal water right, but the Tribe may not administer that right in a way that hurts existing rights arising under State law.
- Instream flow of 20 cfs in both Badger Creek and Two Medicine River.
- As articulated in the Birch Creek Agreement, The parties support increasing storage in Four Horns Reservoir to increase water availability in the Badger and Birch Creek drainages.
- Blackfeet Irrigation Project will be supplied water from the Tribal water right and will be administered by the BIA (or as otherwise provided by Congress).

CUT BANK CREEK AND MILK RIVER

- The Tribe has a water right to all surface water and groundwater. Current non-Tribal non-irrigation water uses are not subject to a call from new Tribal development. Any non-Tribal water right subsequently purchased by the Blackfeet Tribe becomes part of the Tribal water right, but the Tribe may not administer that right in a way that hurts senior rights arising under State law.
- Irrigation uses on Cut Bank Creek and the Milk River are subject to a call for Tribal irrigation development. The Tribe will provide a 10 year grace period prior to new development of its water right not using exclusively stored or imported water.

- Instream flow of 2 cfs in both Cut Bank Creek and the Milk River.

ST. MARY RIVER

- 50,000 acre-feet from the United States' share of the St. Mary River basin or other sources that the State, the Tribe and the United States can agree on.
- The Milk River project protected from injury.
- Tribe entitled to develop storage to use or market this right.

CONTRIBUTIONS TO SETTLEMENT

The Parties are contemplating the following:

- The Montana legislature appropriated \$15 million for mitigation during the 2007 regular session. Of these funds, \$14.5 million are proposed to be paid to the Tribe as part of the Birch Creek Agreement in exchange for a modified schedule of tribal development of its Birch Creek water rights to allow Four Horns Reservoir to become available as a source of mitigation water. The remaining \$500,000 will be used to study various aspects of Four Horns enlargement;
- Additional State and Federal funds to augment water availability for Tribal and other uses through increased storage in Four Horns Reservoir and elsewhere;
- Federal funding for Tribal development on the reservation and new storage, including on the St. Mary River.